

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
LYNCHBURG DIVISION**

CHRISTOPHER WITHERS, )  
Plaintiff, )  
v. )      **Case No. 6:20cv65**  
SAM GREEN, et al. )  
Defendants. )

**DEFENDANTS' THIRD MOTION IN LIMINE**  
**— OTHER INCIDENTS OF EXCESSIVE FORCE —**

Defendants, Sam Green and Dwayne Wade ("Defendants"), by counsel, pursuant to the Court's Pretrial Order, ECF No. 9, file this Motion in Limine seeking entry of an Order any evidence, testimony, or argument as described below.

**STATEMENT OF THE CASE**

In this case, plaintiff, a black male, claims two white law enforcement officers used excessive force on him during an arrest. The issue in this case is whether Defendants' actions were reasonable based upon the information known to them at the time of plaintiff's arrest. Plaintiff has not alleged that Defendants' alleged actions were racially motivated in any way, and plaintiff should be precluded from contending as much at trial. Further, plaintiff should be precluded from mentioning other acts, incidents, lawsuits, or complaints against other law enforcement agencies or any other civil unrest or social movements regarding law enforcement practices or that are either pro- or anti-law enforcement.

## ARGUMENT & AUTHORITY

### **I. Standard of Review**

“A motion in limine is a pretrial motion which requests that the court exclude inadmissible or prejudicial evidence before it is actually offered at trial.” Gonzalez v. Seaworld Parks & Entm’t., LLC, No. 4:20cv27, 2021 U.S. Dist. LEXIS 141256, at \*2–3 (E.D. Va. July 28, 2021) (internal quotations omitted). “The purpose of a motion in limine is to allow a court to rule on evidentiary issues in advance of trial to avoid delay, ensure an even-handed and expeditious trial, and focus the issues the jury will consider.” United States v. Verges, No. 1:13cr222, 2014 U.S. Dist. LEXIS 17969, 2014 WL 559573, at \*2 (E.D. Va. Feb. 12, 2014). Such “[q]uestions of trial management are quintessentially the province of the district courts.” United States v. Smith, 452 F.3d 323, 332 (4th Cir. 2006).

### **II. Other Incidents of Excessive Force Are Irrelevant to this Action**

Evidence is relevant only if it has a “tendency to make a fact more or less probable than it would be without the evidence; and the fact is of consequence in determining the action.” Fed. R. Evid. 401. Evidence that is not relevant is inadmissible. Fed. R. Evid. 402. Moreover, Rule 403 of the Federal Rules of Evidence permits the Court to exclude relevant evidence if its probative value is substantially outweighed by the danger of confusing the issues or misleading the jury. Fed. R. Evid. 403.

Multiple courts have agreed that generalized evidence or argument about other incidents of law enforcement use of force and social movements for or against law enforcement agencies and policing practices would not be helpful to the jury, would confuse the jury, and the risk of unfair prejudice would substantially outweigh any probative value. Cobarrubia v. Edwards, No. 4:19-cv-07899-KAW, 2021 U.S. Dist. LEXIS

177654, \*14–15 (N.D. Cal. Sep. 17, 2021); Slappy v. City of Detroit, No. 19-10171, 2021 WL 2986284, 2021 U.S. Dist. LEXIS 131929, \*12–13 (E.D. Mich. July 15, 2021); Macana v. City of L.A., No. 2:19-CV-03631-CAS-AGR<sub>x</sub>, 2021 WL 80940, 2021 U.S. Dist. LEXIS 40012, at \*6–7 (C.D. Cal. Mar. 1, 2021). There is no claim here regarding nationwide police practices or training. Therefore, there is no factual or legal connection between any other incidents involving excessive force claims against law enforcement or any civil unrest or social movements related to law enforcement and this case.

**CONCLUSION**

For the foregoing reasons, Defendants respectfully request entry of an Order granting their Third Motion in Limine, excluding evidence or argument about other incidents of law enforcement use of force and social movements for or against law enforcement agencies and policing practices, and granting such further relief as the Court deems just and proper.

Respectfully Submitted,  
SAM GREEN and DWAYNE WADE

*/s/ Nathan H. Schnetzler*  
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**CERTIFICATE OF SERVICE**

I hereby certify that on March 28, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will automatically send notification of such filing to all counsel of record.

/s/ Nathan H. Schnetzler  
Nathan H. Schnetzler

